

**TENNESSEE BOARD OF PHARMACY
JANUARY 17 - 18, 2006
ROOM 160 – DAVY CROCKETT TOWER
NASHVILLE, TN**

BOARD MEMBERS PRESENT:

Julie Frazier, President
Sheila Mitchell, Vice President
Robert Mitchell, Member
Monica Franklin, Consumer Member
Todd Bess, Member
Reggie Dilliard, Member

STAFF PRESENT:

Terry Grinder, Interim Director
Alison Z. Cleaves, Chief Legal Counsel
Martha Agee, Board Administrator
Terrence Cannada, Pharmacist Investigator
Harry Fuqua, Pharmacist Investigator
Richard Hadden, Pharmacist Investigator
Ralph Staton, Pharmacist Investigator

The Tennessee Board of Pharmacy convened on Tuesday, January 17, 2006, in Room 160 of the Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee. A quorum of the members being present, the meeting was called to order at 9:05 a.m. CST, by Dr. Julie Frazier, President. President Frazier noted for the record that Dr. Bettie Wilson will not be in attendance. Dr. Todd Bess introduced Ms. Robbie Youngblood, a pharmacy student who is attending the University of Tennessee School of Pharmacy and Dr. Steven Pishao, a pediatric resident, at the U. T. College of Medicine. Dr. Julie Frazier recognized Dr. Terry Grinder, who is presently serving in the capacity as Interim Director for the Board of Pharmacy. Dr. Grinder expressed his appreciation to Mrs. Alison Cleaves, chief legal counsel and to the pharmacy staff for their assistance. Dr. Kendall M. Lynch retired effectively December 31, 2005, from State government. The Board members and office personnel wish Dr. Lynch well in his future endeavors.

APPROVAL OF THE MINUTES

President Julie Frazier requested that the minutes of the November 15 - 16, 2005 meeting be deferred until Wednesday, January 18, 2006. The **minutes of the November 15 - 16, 2005** board meeting were presented and reviewed by the Board. Dr. Robert Mitchell motioned to **accept** the minutes, seconded by Dr. Sheila Mitchell. Dr. Todd Bess abstained. The motion carried.

**FORMAL HEARING
#200418357**

DOCKET #12.12-061784A

Mrs. Alison Cleaves, chief legal counsel, advised the Board that a settlement had been offered to a registered pharmacy technician who attempted to have a controlled substance filled, but the prescription was not filled. The technician has signed an Agreed Order for the surrender of his technician registration for attempting to commit this act. Mrs. Alison Cleaves, chief legal counsel, expressed the Agreed Order is **for the surrender.**

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not revocation of the technician's registration as the technician is currently attending nursing school. The local law enforcement was contacted but the technician was not charged criminally.

Dr. Todd Bess motioned to **accept the surrender of the technician's registration and to provide as detailed information to the Board of Nursing that the Board of Pharmacy is aware of this instance.** Dr. Robert Mitchell seconded the motion. All were in favor and the motion carried.

CONSENT ORDERS

Mrs. Alison Cleaves, chief legal counsel, presented Consent Orders for the Revocation of five (5) pharmacy technician registrations for theft, diversion or possession of controlled substances from the pharmacy.

Norma J. Combs, RT, Stanton, TN

Jesse B. Watson, RT, Dyersburg, TN

Brandis L. Whaley, RT, Chattanooga, TN

Ella L. Johnson, RT, Johnson City, TN

Melissa L. May, RT, Elizabethton, TN

Dr. Sheila Mitchell motioned to **accept** the above referenced technician's registration; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

CONSENT ORDERS FOR INDEFINITE SUSPENSION

Chief legal counsel, Mrs. Alison Cleaves, presented the following Consent Orders for the indefinite suspension of their pharmacist license due to the admission of being chemical dependent.

APRIL COLEMAN, DPH

**60 Hickory Lane
Lexington, TN 38351**

CHARLES E. CUTHBERT, DPH

**226 Halberton Drive
Franklin, TN 37069**

NORMAN A. EZZELL, DPH

**8805 Havendale Lane
Chattanooga, TN 37421**

JANICE A. LEWIS, DPH

**1690 Lake Park Circle
Morristown, TN 37814**

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KEVIN STAFF, DPH
9233 Jack Russell Court
Powell, TN 37849

Dr. Sheila Mitchell motioned to **approve** the Consent Orders; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

BRIAN KILPATRICK, DPH
2709 Fogle Street
Nashville, TN 37211

Chief legal counsel, Mrs. Alison Cleaves, presented a Consent Order for the Reinstatement of License for Dr. Brian Kilpatrick. Dr. Kilpatrick's license has been placed on probation for a term of ten (10) years. Dr. Sheila Mitchell motioned to **accept** the Consent Order for Reinstatement; seconded by Dr. Todd Bess. All were in favor and the motion carried.

ROY L. KINNEY, DPH
8579 Sandport Drive
Germantown, TN 38139

Mrs. Alison Cleaves, chief legal counsel for regulatory boards, noted the Board approved counsel's authorization of the action whereas Dr. Roy Kinney demonstrated unprofessional conduct by consuming alcohol while engaging in the practice of pharmacy. Dr. Kinney's license has been suspended for thirty (30) days with credit given for time served and he entered into a two-year (2) term of probation beginning November 25, 2005, the date on which Dr. Kinney executed the Consent Order.

AND

DANIEL PETTY, DPH
1479 Ridley Drive
Franklin, TN 37064

Chief legal counsel, Mrs. Alison Cleaves, presented a Consent Order whereas Dr. Daniel Petty pled guilty to the conviction of his second DUI. Dr. Petty's pharmacist license will be suspended for a period of thirty (30) days from December 14, 2005, the date the Consent Order was executed.

Dr. Robert Mitchell motioned to **accept the Consent Orders for Dr. Roy Kinney and Dr. Daniel Petty**; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

WAIVERS

K. DALE HOOKER, DPH
200 Belleaire Drive
Knoxville, TN 37934

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Dr. Dale Hooker is requesting a waiver of Rule 1140-1-.07 (3) (b) relevant to the requirement for the completion of three-hundred and twenty (320) hours of pharmacy internship for the reinstatement of his pharmacist license, as he has been working in Chili since 2001. Dr. Reggie Dilliard motioned to **waive the internship hours**, and to **accept the continuing education hours as submitted**. Mrs. Monica Franklin seconded the motion. All were in favor and the motion carried.

ELAINE LENTS, DPH
PCS - DYERSBURG COUNSELING CENTER #3807
2380 Henry Street
Dyersburg, TN 38024

Dr. Elaine Lents is requesting a waiver of Rule 1140-3-.14 (12) to allow her to serve as the Pharmacist-in-Charge at PCS - Dyersburg Counseling Center #3807 in Dyersburg, Tennessee and William F. Walker Counseling Center #2381, in Ripley, Tennessee. Dr. Lents will work opposite days at each facility, (M/W; T/T). Dr. Sheila Mitchell motioned to **approve** the waiver request, seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

PATRICK MIX
2850 Middle Tennessee Blvd.
Murfreesboro, TN 37130

Mrs. Alison Cleaves, chief legal counsel, stated Mr. Patrick Mix is requesting approval of his pharmacy technician registration as he noted on his application that he had a DUI charge. Mr. Mix was asked to submit documentation of the judgment from the General Sessions Court in Rutherford County. Mrs. Cleaves stated the criminal record will not been expunged until March, 2006. Dr. Robert Mitchell motioned for Mr. Mix to **serve the remainder of his probation**; seconded by Dr. Todd Bess. All were in favor and the motion carried.

DAVID SULLIVAN, DPH
4280 Minden Road
Memphis, TN 38117

Dr. David Sullivan is requesting a Modification to the Consent Order for Reinstatement of License which he entered into with the Board on September 20 - 21, 2005 relevant to the successful completion of the MPJE and the internship hours. Dr. Sullivan has been unsuccessful in obtaining a passing score and the fees associated with the MPJE are placing a financial burden on his family. Mrs. Monica Franklin motioned for Dr. Sullivan to **continue taking the MPJE**; seconded by Dr. Todd Bess. All were in favor and the motion carried. Dr. Sullivan

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stated he has been teaching Pharmacology I and II, Pharmacy Math, Clinical or Pharm Tech Lab, and Pharmaceutics classes at Remington College while waiting on the reinstatement of his pharmacist license. Dr. Reggie Dilliard motioned **to hold the internship hour request until a favorable score is obtained on the MPJE**; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

CONSUELA YOUSEF, DPH
475 Allen Cox Road
Ripley, TN 38063

Dr. Consuela Yousef is requesting a waiver of Rule 1140-5-.01 relevant to the fifteen (15) Live ACPE continuing education hours required for the renewal of her pharmacist license. Dr. Yousef is currently working in Saudi Arabia and is unable to obtain the Live CE portion. Dr. Todd Bess motioned for **Dr. Yousef to furnish more detailed information**, as to the type of pharmacy practice setting, how long has she been living in Saudi Arabia and is the request for this license renewal cycle only? Mrs. Monica Franklin seconded the motion. All were in favor and the motion carried.

MICHELLE MOSS, DPH
2727 Long Grove Road
Marietta, GA 30062

Dr. Michelle Moss is requesting a waiver of Rule 1140-5-.01 relevant to the thirty (30) continuing education hours required for the renewal of her pharmacist license due to personal circumstances. Dr. Sheila Mitchell motioned to **grant Dr. Moss a six-month extension**; seconded by Dr. Robert Mitchell. Dr. Julie Frazier noted six months from January, 2006, the waiver will expire on July 31, 2006. All were in favor and the motion carried.

MEGHANA ANTANI, DPH
11352 Holter Road
White Marsh, MD 21162

Dr. Meghana Antani is requesting a waiver of Rule 1140-1-.04 (1) (d), relevant to the requirement to complete five-hundred (500) internship hours, which must be acquired in Tennessee, for licensure as a Foreign Graduate Score Transfer candidate. Dr. Antani was licensed by the Maryland Board of Pharmacy in October, 2005, and score transferred to Tennessee. Dr. Sheila Mitchell motioned to **deny the waiver request for the internship hours**; seconded by Dr. Robert Mitchell. All were in favor and the motion carried. Dr. Sheila

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Mitchell motioned that the applicant should **seek licensure through the reciprocity process rather than the route she has taken**; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

**AMANDA R. HERRING, SPECIALIST
ACCREDITO HEALTH, INC.
1640 Century Center Parkway #101
Memphis, TN 38134**

Ms. Amanda Herring with Accredo Health, Inc., is requesting a waiver of Rule 1140-3-.14 (12) to allow Dr. Katherine Greer to serve as the pharmacist-in-charge at Pediatric Services of America, Inc. and Accredo Health Group, Inc., during a purchase transaction between the pharmacies until March 31, 2006. Dr. Sheila Mitchell motioned to **grant the waiver request until March 31, 2006**; seconded by Dr. Todd Bess. All were in favor and the motion carried.

LEGAL/COMPLAINT REPORT

1. Case No.: L05-PHR-RBS-200500989

Complaint alleges that Respondent, a registered technician, forged prescriptions for Hydrocodone, Prednisone, Carisoprodol, Budeprion, and Triazolam. Registration expired before we could bring it to a formal hearing.

Recommendation: Closure and reopen upon reapplication

Dr. Todd Bess motioned to **accept counsel's recommendation**; seconded by Dr. Sheila Mitchell. All were in favor and the motion carried.

2. Case No.: L05-PHR-RBS-200504474

Complaint alleges that Respondent was terminated for theft of Hydrocodone (various strengths) and Alprazolam. The complaint was filed with the Board after the technician's registration expired.

Recommendation: Closure and reopen upon reapplication

Mrs. Monica Franklin motioned to **accept counsel's recommendation**; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

3. Case No.: L06-PHR-RBS-200420668

Complainant alleges that the Respondent's (pharmacist) TPRN Advocacy has been removed because the Respondent tested positive for alcohol. Respondent is currently on probation with this Board.

Recommendation: Formal Hearing

Dr. Robert Mitchell motioned to **accept counsel's recommendation**; seconded by Mrs. Monica Franklin. Dr. Sheila Mitchell motioned to amend the motion, "and/or revocation of license." There was no second to the amendment to the motion. The amendment to the motion dies for the lack of a second. All were in favor and the original motion carried.

4. Case No.: L06-PHR-RBS-200504355

Complainant alleges that the Respondent, pharmacist, was convicted of one count of prescription fraud, Class D Felony; one count of attempting to obtain a forged prescription, Class D Felony; one count of forgery, Class E Felony; and possession of a controlled substance with the intent to sell, Class D Felony. Respondent was given two (2) years probation for these convictions. Respondent has failed to report the convictions to the Board.

Recommendation: Formal Hearing (Consent Order for Revocation)

Mrs. Monica Franklin motioned to **accept counsel's recommendation**; seconded by Dr. Sheila Mitchell. All were in favor and the motion carried.

5. Case No.: L06-PHR-RBS-200504475

Respondent, a pharmacist, self-reported that he had been terminated for violation of company policy for improper dispensing of Schedule II Controlled Substances. Respondent states that approximately 8-9 months prior to reporting his conduct to the Board, he began to loan a patient a few Oxycontin 80 mg to get the patient by until he could obtain a new prescription to prevent the patient from having withdrawal. As this arrangement continued, the Respondent developed personal concerns about continuing this practice and reported it to his supervisor and the Respondent was terminated. A subsequent audit showed a shortage of 33 x Oxycontin 80 mg. Respondent admits it was a terrible error in judgment.

Prior complaints: None

Recommendation: Letter of Warning/Consent Order with a civil penalty

Dr. Sheila Mitchell motioned to **issue a Letter of Warning** to the pharmacist; seconded by Mrs. Monica Franklin. There was one (1) nay vote. The motion carried.

6. Case No.: L05-PHR-RBS-200504502

During a routine periodic inspection, an investigator found that the pharmacist in charge at the pharmacy was practicing pharmacy with an expired license. Respondent's license expired on November 30, 2005 and the inspection was conducted on December 16, 2005. Respondent verbally admitted the oversight to the investigator and then drove to the Board of Pharmacy office to renew his license immediately which was processed on December 20, 2005.

Prior complaints: None

Recommendation: Letter of Warning

Mrs. Monica Franklin motioned to **accept counsel's recommendation**; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

7. Case No.: L05-PHR-RBS-200419571

Respondent pharmacist admitted to consuming two (2) Hydrocodone tablets while he was on probation with the Board. Respondent had his license indefinitely suspended for chemical addiction and was placed on a five (5) year term of probation with the Board from March 15, 2005 to March 15, 2010.

Recommendation: Formal Hearing (Consent Order for Revocation)

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Mrs. Monica Franklin motioned to **accept counsel's recommendation**; seconded by Dr. Todd Bess. All were in favor and the motion carried.

8. Case No.: L05-PHR-RBS-200500462

Complainant alleges that the Respondent, a technician, admitted to taking Hydrocodone and Alprazolam from the pharmacy. This matter was originally sent to an investigator to obtain the admission or investigation report done by the pharmacy, etc. A Consent Order for Revocation was mailed in November, 2005 and I did not receive anything back indicating that the investigator could not find the Respondent. The Respondent's registration will expire on January 31, 2006.

Recommendation: Close and reopen upon reapplication if Respondent does not sign the C/O before the expiration date

Dr. Sheila Mitchell motioned to **accept counsel's recommendation**; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

9. Case No.: L05-PHR-RBS-200500569

Respondent, a pharmacist, admits that he consumed Adderall while he was on probation with the Board and the Respondent did not have a prescription for the medication. The Board previously authorized a Consent Order for revocation of his license. Respondent contacted me upon receiving the Consent Order and wanted to know if the Board would accept a Consent Order for Surrender instead of Revocation. Respondent is not working as a pharmacist and indicates that the Consent Order for Revocation would impair his ability to obtain a job as a counselor.

Prior complaints:

1987- Surrender for chemical addiction;

1991- Reinstated with three (3) year term of probation;

2000- Surrender for chemical addiction;

2001- Inactive Status;

2003- Reinstated with five (5) year term of probation

Recommendation: Discretion of the Board

Dr. Sheila Mitchell motioned to **allow the pharmacist to surrender the license and he must appear before the Board for reinstatement**; seconded by Dr. Todd Bess. All were in favor and the motion carried.

10. Case No.: L05-PHR-RBS-200504000

Complainant alleges that the Respondent, a technician, was terminated from her employment for theft of drugs. Matter came to the Board on or about November 9, 2005. Matter opened in legal on or about November 23, 2005. Matter sent to investigations to get admission statement, CCTV tape, etc. on December 7, 2005 and the Respondent's registration expired on December 31, 2005.

Recommendation: Close and reopen upon reapplication

Dr. Sheila Mitchell motioned to **accept counsel's recommendation**; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

11. Case No.: L05-PHR-RBS-200503185

Complainant, (Respondent's former employer) alleges that the Respondent (technician) was taking telephone prescriptions for friends and family members when the prescriptions were not authorized by a prescriber. Matter was opened by the Board in August, 2005; sent to investigations on September 9, 2005 and it was still in investigations when her registration expired on December 31, 2005.

Recommendation: Close and reopen upon reapplication

Dr. Todd Bess motioned to **accept counsel's recommendation**; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

12. Case No.: L05-PHR-RBS-200502589

Complainant alleges that the Respondent had telephoned prescriptions and filled for herself and family members when the prescriptions were not authorized by a prescriber. Complaint opened on July 11, 2005 by the Board and her registration had already expired on April 30, 2005.

Recommendation: Close and reopen upon reapplication

Dr. Todd Bess motioned to **close and reopen upon reapplication**; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

13. Case No.: L05-PHR-RBS-200500461

Complainant alleges theft of controlled substances by the Respondent. Matter was sent to investigations in March, 2005 and had not returned with the information we needed when Respondent's registration expired on December 31, 2005.

Recommendation: Close and reopen upon reapplication

Dr. Robert Mitchell motioned to **accept counsel's recommendation**; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

14. Case No.: L05-PHR-RBS-200503644

Complainant alleges that the Respondent pharmacy fraudulently billed for prescriptions that were never consumed, ordered or authorized; the patient was a resident of an assisted living facility. Investigation revealed that there was no evidence of fraud, but was the fault of the facility. Both the DPh and the PIC contend that the prescriptions were legal and were ordered by the facility. Investigator obtained a statement from the Vice President for Finance at the facility who tendered an apology noting that the nurse practitioner at the facility mistakenly ordered the medication, noting that the account was credited for all billings, and outlining the series of events that resulted in the billing error.

Prior complaints:

Pharmacy: None

DPh (PIC): None

Recommendation: Dismiss

Dr. Todd Bess motioned to **accept counsel's recommendation**; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

15. Case No.: L05-PHR-RBS-200503650

Complainant alleges that the patient's prescription for Methazolamide 25mg was mistakenly filled with Methimazole 5mg; the pharmacist was adjusted the dosage to five (5) tablets so that the patient was administered 25mg. The patient was an animal and developed panting, hyperactivity, vomiting, diarrhea and dehydration as a result of consuming the incorrect medication. The patient required monitoring, but recovered. Pharmacist who dispensed the medication admitted the error and stated that he reviews the 4 point check a minimum of 2 times for each new prescription. The first check is in descending order, the second in ascending order and comparing the input against the prescription image. During the visual verify step, he brings up the prescription image to check against the dispensed drug. In addition, he also brings up the prescription image during consultation to include with the computer-provided drug information.

Prior complaints:

DPh: None

Pharmacy: None

Recommendation: Letter of Warning

Dr. Todd Bess motioned to **issue a Letter of Warning**; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

16. Case No.: L05-PHR-RBS-200501367

Complainant alleges that the Respondent filled a prescription for a Duragesic prescription written "dispense as written" with a generic. Respondent admitted that he filled the prescription with a generic. Respondent states that he did not fill the prescription with a generic initially, but stored the prescription on the profile and left a note for the next pharmacist in case the physician called back with authorization to fill the prescription with a generic. Seven days later the Respondent filled the prescription with a generic.

Recommendation: Letter of Warning

Mrs. Monica Franklin motioned to **accept counsel's recommendation**; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

17. Case No.: L05-PHR-RBS-200501486

Complainant, pharmacy technician, alleges that the Respondent, pharmacist, took medications from the pharmacy for himself without a prescription and let the Complainant do the same. Investigation into the matter revealed that there were eight (8) prescriptions dispensed by the Respondent for the Respondent or his family members without authorization from an authorized prescriber. It appears that the prescriptions were not for controlled substances, but were for Zithromax and Singular.

Recommendation: Consent Order with \$500.00 civil penalty (PIC)

Dr. Sheila Mitchell motioned to **accept counsel's recommendation**; seconded by Dr. Todd Bess. All were in favor and the motion carried.

18. Case No.: L04-PHR-RBS-200421160

Complainant alleges that the Respondent, pharmacist, worked in a pharmacy dispensing controlled substances after his DEA registration was revoked or surrendered for cause. Respondent did not notify his employer that his employer would need a waiver for him to dispense controlled substances. Respondent was employed at the pharmacy through a temporary placement agency and the temp agency indicates that the

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Respondent failed to notify them about his waiver situation. Respondent stated that he did inform his potential employers of the status of his DEA registration. Respondent did provide us with a copy of an email that he sent to one of the individuals with whom he interviewed referencing a form letter for a DEA waiver. The pharmacies did not request the waiver and allowed the Respondent to work without it.

Recommendation: Dismissal

Dr. Sheila Mitchell motioned to **issue a Letter of Instruction** to the pharmacist regarding to provide an appropriate notice to his employer of the status of his DEA license; seconded by Dr. Todd Bess. All were in favor and the motion carried.

19. Case No.: L05-PHR-RBS-200503643

Respondent entered into a Pre-Trial Diversion Memorandum of Understanding placing her on a two (2) year term of probation on or about September 23, 2005. The Respondent was charged with Tampering with Evidence by concealing a piece of equipment that was evidence in a crime.

Recommendation: Consent Order with a term of probation mirroring the criminal term of probation.

Dr. Sheila Mitchell motioned to **accept counsel's recommendation and to abide by all terms and conditions**; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

DIRECTOR'S REPORT

SUGGESTED AMENDMENT TO RULE 1140-3-.14 (13) PHARMACIST-IN-CHARGE

Dr. Terry Grinder stated the Board may want to consider a suggested amendment to Rule 1140-3-.14 (13) relevant to the minimum percentage the designated pharmacist in charge shall be on duty when the pharmacy is in operation FROM fifty percent 50% **TO thirty percent 30%**. Except, in any event, the pharmacist-in-charge shall not be required to be on duty more than an average of forty (40) hours per week. The Board took no action.

AMENDMENT TO RULE 1140-1-.14 (4) (m) PRESCRIPTION DRUGS DISPENSED BY HEALTH DEPARTMENTS

Dr. Terry Grinder stated a request was received from the Department of Health to amend Rule 1140-1-.14 (4) (m) Premarin Tablets, by adding the word, "conjugated estrogen or vaginal cream" after the word "tablets". The Board took no action.

PROPOSED LANGUAGE TO RULE 1140-3-.13 AUTOMATED DISPENSING DEVICES FOR AMBULATORY PHARMACY PRACTICE

Interim Director, Dr. Terry Grinder, noted in the current rule it states, "The following procedures shall be observed in the use and operation of automated dispensing devices used for storing and dispensing capsules and tablets:

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(3) Lot numbers may not be mixed.”

Proposed Rule:

“The following procedures shall be observed in the use and operation of automated dispensing devices used for storing and dispensing capsules and tablets:

(3) If multiple lot numbers of the same drug are added to a cell or cassette they must be documented and the expiration date soonest to expire must be on the default expiration date. In the event of a Class I or Class II recall, all drug contents of the cell or cassette must be removed from commerce.” The Board took no action.

STATE OF TENNESSEE AUDIT COMMITTEE ACT OF 2005

Interim Director, Terry Grinder, discussed with the members that the Tennessee General Assembly enacted legislation known as the “State of Tennessee Audit Committee Act of 2005”, which is to ensure there are checks and balances in place and that all matters are being handled properly. This law was signed by the Governor on June 6, 2005 and became effective upon becoming a law.

On November 23, 2005, Dr. Reggie Dilliard, former President of the Board was notified by Mr. John Morgan, Comptroller of the Treasury, and Mr. Arthur Hayes, Jr., Director for the Department of Audit, that he was selected to serve on this committee.

Section 4-35-101, et seq., *Tennessee Code Annotated*, requires the creation of audit committees for those entities that have governing boards, councils, commissions or equivalent bodies that can hire and terminate employees and/or are responsible for the preparation of financial statements. The applicable entities are required to develop an audit committee charter and appoint an audit committee in accordance with the legislation.

Mrs. Alison Cleaves, chief legal counsel, advised President, Dr. Julie Frazier to nominate a committee for the purpose of ethics review; to ensure that complaints are being handled ethically and in accordance to proper procedures. Dr. Julie Frazier asked if there were any volunteers for this Committee. Mrs. Monica Franklin, Dr. Sheila Mitchell and Dr. Robert Mitchell volunteered to serve on the Audit Committee for 2005.

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2006 UPDATE SEMINAR SCHEDULES

February	11 - 12	<u>Knoxville</u> Update Seminar Ralph Staton + No Board Member
	18 - 19	<u>Cookeville</u> Update Seminar Terry Grinder /Robert Mitchell
March	4 - 5	<u>Jackson</u> Update Seminar Terry Cannada/Reggie Dilliard
	11 - 12	<u>Nashville</u> Update Seminar Julie Frazier/Todd Bess
April	1 - 2	<u>Chattanooga</u> Update Seminar Richard Hadden + No Board Member
	22 - 23	<u>Kingsport</u> Update Seminar Ralph Staton + Bettie Wilson
	29 - 30	<u>Memphis</u> Update Seminar Terry Grinder/Sheila Mitchell

W. SHANNON MCCOOL, DPH
JOHNSON CITY, TN

Interim Director, Terry Grinder, advised the members of Dr. Shannon McCool's dissatisfaction in an attempt to obtain either hard or electronic copies of non-ACPE continuing education programs. The Board noted that it recognizes the American Council on Pharmaceutical Education "ACPE", as the national organization for the accreditation of professional degree programs in pharmacy and for approval of providers of continuing pharmaceutical education.

2005 ANNUAL REPORT OF THE TENNESSEE BOARD OF PHARMACY

Interim director, Terry Grinder, presented the 2005 Annual Report of the Tennessee Board of Pharmacy. Dr. Grinder acknowledged comments to Ms. Kolleen Jeffery for an excellent job. The Board expressed their appreciation as well.

UPDATE - CONTROLLED SUBSTANCE DATABASE MONITORING

Mrs. Alison Cleaves, chief legal counsel, advised the Controlled Substance Database Monitoring Rules were released from the Attorney General's office on December, 22, 2005 and filed with the Secretary of State's Office on January 7, 2006. The Request for Proposal (RFP) is currently being reviewed by OIR.

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TPA MIDYEAR MEETING
FEBRUARY 27 - 28, 2006
DOUBLETREE HOTEL - NASHVILLE, TN

The Tennessee Pharmacist Association Midyear Meeting will be held on February 27-28, 2006 at the Doubletree Hotel, in Nashville, Tennessee. The Tripartite agenda should include the following topics for discussion: technician rules, CSDB, Disaster Relief, and USPS #797 Model Language - Compounding.

MULTISTATE PHARMACY JURISPRUDENCE EXAM RESULTS

The Board's interim director, Terry Grinder, noted since the implementation of the Multistate Pharmacy Jurisprudence Examination on July 1, 2005, through December 31, 2005, Tennessee has a fifteen percent (15%) failure rate with some candidates taking the exam more than one (1) time. Interim director Terry Grinder mentioned pharmacist investigator, Dr. Richard Hadden would be attending a MPJE review in San Diego, California on January 18, 2006.

SAMUEL SMITH, DPH - REQUEST FOR REINSTATEMENT OF LICENSE
KNOXVILLE, TN

Dr. Samuel Smith appeared before the Board along with TPRN advocate, Dr. Edwin Bills, to request the reinstatement of his pharmacist license. Interim Director, Dr. Terry Grinder, informed the Board in January, 2005, Dr. Smith's license was reinstated with a five (5) year term of probation. In September 20 - 21, 2005, Dr. Smith relapsed and his license was placed on indefinite suspension. Dr. Smith noted he was working in a stressful environment and dealing with customers who were requesting early refills on their prescriptions. Advocate, Dr. Edwin Bills, with the Tennessee Pharmacist Recovery Network stated Dr. Smith completed a three day evaluation and signed a contract with TPRN. Dr. Bills noted Dr. Smith is compliant with the requirements and recommendations of the TPRN. After board discussion, Dr. Sheila Mitchell motioned to:

1. Respondent does hereby agree to the reinstatement of license number **#3060** with the following probationary conditions. Said probation shall remain in effect for a period of **ten (10) years**, from **January 17, 2006 to January 17, 2016**.
 - a) The Respondent shall completely abstain from the consumption of alcohol or any other drugs, except as specified in (b).
 - b) Respondent shall be able to consume legend drugs or controlled substances prescribed

by the Respondent's primary physician, John Bushore, MD and veterinarians, except in the case of an emergency or upon a proper referral from the Respondent's primary physician. The Respondent shall immediately notify the Board office in writing of the name of the Respondent's primary physician each time the Respondent changes primary physicians;

- c) The Respondent shall not obtain or attempt to obtain any prescriptions in the respondent's name for any legend drugs, controlled substances or devices containing same from a physician other than the Respondent's primary physician or from any other health care provider, such as a nurse practitioner, physician's assistant or psychiatrist;
- d) The Respondent shall destroy any unused controlled substances prescribed under the provisions of subsection (b) no later than thirty (30) days following the completion of the prescribed course of treatment;
- e) The Respondent shall report to the Board, in writing, the ingestion of any and all legend drugs or controlled substances (a copy of the prescription will satisfy the requirement);
- f) The Respondent shall submit to random sampling of urine, blood or bodily tissues for the presence of drugs and alcohol, at the Respondent's own expense, by agents of the Board, such as the Tennessee Pharmacists Recovery Network for as long as the Respondent has an active license. In the event that the sampling indicates the presence of drugs for which the Respondent does not have a valid prescription or the sampling indicates the presence of alcohol, then formal disciplinary charges may be brought against the Respondent which could result in the revocation of the Respondent's remaining term of probation or the suspension or revocation of the Respondent's license to engage in the practice of pharmacy. Prior to such disciplinary charges being heard by the Board, the Respondent's license may be summarily suspended;
- g) The Respondent shall comply with all of the terms and conditions of the extended aftercare contract he or she entered into with Tennessee Pharmacists Recovery Network. Respondent shall return a copy of said contract with this Consent Order to the

- h) The Respondent shall not serve as pharmacist-in-charge for a period of three (3) years; however, after a period of two (2) years, the Respondent may petition the Board for a modification of this Consent Order to remove the restrictions upon a show of good cause. The Respondent shall not work as a “floater” for a period of three (3) years, meaning that the Respondent shall not work at more than one (1) pharmacy location at the same time without the permission of the Board;

Dr. Todd Bess seconded the motion. There was one (1) nay vote. The motion carried.

**HAROLD SHALETT, DPH - REQUEST FOR REINSTATEMENT OF LICENSE
CHATTANOOGA, TN**

Dr. Harold Shalett appeared before the Board to request the reinstatement of his pharmacist license and was not accompanied by an advocate. Dr. Terry Grinder, interim director, noted in November, 1999, Dr. Shalett was indicted by the Criminal Court of Polk County, as the result of an audit performed which revealed a shortage of drugs. In June, 2001, Dr Shalett plead guilty to four (4) counts of Medicaid Fraud, a Class E Felony and was sentenced to one (1) year of unsupervised probation and ordered to pay the State of Tennessee eleven-thousand dollars(\$11,000) for fraudulent billing and misrepresentation of services. In May, 2002, a HHS/OIG exclusion was placed against his license. In November, 2002, Dr. Shalett signed a Consent Order to voluntarily place his license in indefinite suspension.

During Board discussion, Mrs. Alison Cleaves advised that Dr. Shalett’s license has been suspended for a period over three (3) years and must complete the following requirements:

(ii) One (1) year to not more than five (5) consecutive years,

the pharmacist shall:

- I. Satisfy all past due continuing pharmaceutical education;
- II. Successfully complete the Multi-State Pharmacy Jurisprudence Examination (MPJE);
- III. Pay all cumulative license renewal fees and any applicable penalties;

IV. Complete a period of pharmacy internship in Tennessee.

A. For more than three (3) consecutive years but not more than five (5) consecutive years, three hundred twenty (320) hours within one hundred eighty (180) consecutive days.

Dr. Sheila Mitchell motioned to reinstate Dr. Shalett's license #2187 with all the requirements legal counsel outlined; seconded by Dr. Reggie Dilliard. Dr. Dilliard noted the internship is important and to notify your employer because of the restraints placed on your license. Dr. Dilliard recommended that the continuing education hours are worthwhile prior to entering the practice of pharmacy again. All were in favor and the motion carried.

**WEST CONNER, DPH
DEERFIELD, IL**

Dr. West Conner appeared before the Board to discuss providing consulting services to patients and whether licensure would be required in Tennessee. Dr. Conner would like to assist customers with saving money on their prescriptions by directing them to utilize mail order, to buy in bulk or to switch to a less expensive generic alternative after seeking approval from their doctor. Dr. Conner gave an example of the services to be offered. A patient who takes Zocor 20 mg. daily at \$100/month; Dr. Conner would contact the physician to verify if the patient could be prescribed Zocor 40 mg, then cut the medication in half and take daily, a savings to the customer of \$50. Dr. Conner stated his office is located at his residence, and not in a retail pharmacy and to phone in a prescription from this location, is this considered as being a designated agent of the doctor or is the transfer of the prescription legal, as this action would be deemed a new prescription. Dr. Todd Bess stated anyone can be an agent for the patient. A collaborative agreement between the patient and the consultant should be established in assisting with the patient's care.

Board of Pharmacy Rule 1140-3-.02 references the location of the practice as, "the practice of the knowledge skills of pharmacy is not pharmacy practice site dependent."

The term "practice of pharmacy" is defined in T.C.A. Section 63-10-404 (31) (A) as "a patient-oriented health service profession in which pharmacists interact and consult with patients and other health care professionals to enhance patients' wellness, prevent illness and optimize outcomes." In (31) (B), it states, "...pharmacists may convey orders for laboratory tests and prescription orders where required to carry out a medical order

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when authorized by the attending physician for each patient.” President Julie Frazier noted an agent of the physician enters into a “collaborative practice” agreement for each individual patient. Mrs. Alison Cleaves inquired as to the definition of “agent of the physician” and the term is defined in the Board of Medical Examiners Rule 0880. The Board noted there is no rule that addresses this type of practice.

**KIRKLAND JEANE, DPH - REQUEST FOR REINSTATEMENT OF LICENSE
ABINGDON, VA**

Interim Director, Terry Grinder, advised the Board at the November 16 - 17, 2004, meeting, Dr. Kirkland Jeane submitted a Request to Petition the Board to Appear in regards to a Formal Hearing that was conducted on May 14, 2003, relevant to the action taken by the Tennessee Board which was a result of disciplinary action taken by the Virginia Board of Pharmacy. Director Grinder stated Dr. Jeane was issued a Tennessee license by reciprocity based on falsified information concerning disciplinary action and the Board voted to suspend Dr. Jeane’s license from May 14, 2003 - December 31, 2005. The Honorable Judge Charles Smith with the Virginia Circuit Court of Washington County was reluctant to release Dr. Jeane from probation in Virginia until the Tennessee Board could assure him that proper monitoring was in place. The Board voted to abide by the Final Order that was filed with the Secretary of State’s Office on November 3, 2003, whereas Dr. Jeane’s pharmacist license is suspended from May 14, 2003 to December 31, 2005 and shall personally appear before the Board if he petitions the Board for the reinstatement of his license. In the event Dr. Jeane’s probation in Virginia ends before December 31, 2005, he can apply to the Board for reinstatement.

Dr. Kirkland Jeane acknowledged his appreciation to the Board for allowing him the opportunity to appear. Dr. Jeane stated he is requesting the reinstatement of his Tennessee license and desires to be in good standing with the state board. Dr. Jeane stated his home state of licensure is Virginia and he had encountered some legal problems. Dr. Jeane applied by reciprocity to Tennessee before the license was suspended in Virginia. Dr. Jeane noted when the Tennessee Board was notified of the disciplinary action taken by the Virginia Board; the Virginia Board had reinstated his license. The Tennessee Board took action based on the Virginia Board’s actions and due to the license suspension in Tennessee in May, 2003; the Virginia Board subsequently placed a mandatory suspension on his license. Dr. Jeane stated he has complied with all the requirements imposed by the Virginia Board of Pharmacy. Dr. Jeane advised that his license in Virginia has been reinstated to an

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“active” status and is on probation for a term of five (5) years. After board discussion, Dr. Sheila Mitchell motioned to reinstate license #11558 with the following requirements **with no probationary period**:

- I. Provide written notice requesting an active license;
- II. Satisfy all past due continuing pharmaceutical education;
- III. Successfully complete the Multi-State Pharmacy Jurisprudence Examination (MPJE);
- IV. Pay all cumulative license renewal fees and any applicable penalties;
- V. Complete a period of pharmacy internship in Tennessee.*
 - A. From one (1) year to not more than three (3) consecutive years, one hundred sixty (160) hours within ninety (90) consecutive days.

Mrs. Monica Franklin seconded the motion. There was one (1) nay vote. The motion carried. Mrs. Monica Franklin motioned to **waive the internship hours**; seconded by Dr. Reggie Dilliard. There was one (1) nay vote. The motion carried.

Dr. Sheila Mitchell motioned **to mirror the probationary period of the Virginia Board of Pharmacy for the exact same date**; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

**MICHAEL STEIN, DPH - RECIPROCAL CANDIDATE
BUTLER, TN**

Interim Director, Terry Grinder, advised the Board Dr. Michael Stein has filed a reciprocity application with the Tennessee Board and stated he had pled guilty to a charge of unlawful possession of a controlled substance on October 23, 1987 in Dallas, Texas. Dr. Stein received a sentence of five (5) years probation and successfully completed the terms of his probation on October 22, 1992. At the time of the conviction, Dr. Stein was not practicing pharmacy. Dr. Stein obtained licensure with the State of Tennessee, Department of Health as an Alcohol and Drug Counselor on January 1, 1997.

Dr. Stein's pharmacist license is active and in good standing in the State of New York. After board discussion, Dr. Todd Bess motioned to allow Dr. Stein to **continue with the reciprocity process**; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

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ADJOURNMENT

Dr. Julie Frazier entertained for a motion to adjourn the board meeting on Tuesday, January 17, 2006 at 3:40 p.m. CST; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

RECONVENED

The Tennessee Board of Pharmacy reconvened on Wednesday, January 18, 2006 at 9:00 a.m. CST in Room 160 of the Davy Crockett Tower, Nashville, Tennessee. A quorum of the members being present, President Julie Frazier called the meeting to order. All board members were present with the exception of Mrs. Monica Franklin and Dr. Bettie Wilson.

FORMAL HEARING

CLAYTON ARWOOD, DPH
408 S. Broad Street
New Tazewell, TN 37825

Docket # 12.12-080547A
Complaint # 200501660

The Honorable Margaret Robinson, Administrative Law Judge with the Secretary of State's office presided at the hearing to consider the matter of Clayton Arwood, a pharmacist, who was engaging in various prohibited conduct and exhibited an incapacity that prevents a pharmacist from engaging in the practice of pharmacy. Mrs. Alison Cleaves, chief legal counsel for Regulatory Boards, Department of Commerce and Insurance represented the State of Tennessee. Mr. Douglas Trant, counsel for Dr. Clayton Arwood. The board members present for the hearing were: Dr. Julie Frazier, Dr. Sheila Mitchell, Dr. Robert Mitchell, Dr. Todd Bess and Dr. Reggie Dilliard.

Mrs. Alison Cleaves stated the Notice of Hearing and Charges were filed on October 11, 2005 with the Secretary of State's Office and on December 16, 2005, the State filed an Amended Notice of Hearing and Charges. Judge Robinson asked the Board if they had received any knowledge or information regarding the hearing and the Board acknowledged "no". The witnesses testifying in the proceedings were all sworn in by the court reporter. After sworn testimony was given by the witnesses and upon the deliberations presented, the following action was taken by the Board.

FINDINGS OF FACT:

Dr. Reggie Dilliard motioned to accept as stated in the Allegations of Facts, #1 No Change; #2 No Change; #3 "...Xanax, and Lortab without a prescription from a licensed prescriber..."; #4 No Change; #5 No Change;

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#6 No Change; #7 No Change and #10 No Change; as the Findings of Fact. Dr. Robert Mitchell seconded the motion. All were in favor and the motion carried.

CONCLUSION OF LAW

Dr. Reggie Dilliard motioned that the Board revoke pharmacist license #6230 for Clayton Arwood and assess a \$1,000 civil penalty against that license; and to assess a \$1,000 civil penalty against Woody's Pharmacy, license #3290 and to accept as stated in the Amended Notice of Hearing and Charges as the Conclusion of Law; seconded by Dr. Sheila Mitchell.

Dr. Robert Mitchell motioned to assess penalties. There was no second made to the motion. The motion dies for the lack of a second. All were in favor and the motion carried.

POLICY STATEMENT

Dr. Sheila Mitchell motioned insofar as the Tennessee Board of Pharmacy is charged with protecting the public health, safety and welfare, it is in the best interest of this Board to revoke the pharmacist license of Clayton Arwood as he is guilty of dishonorable, immoral, unethical or unprofessional conduct to engage in the practice of pharmacy.

Dr. Robert Mitchell seconded the motion. All were in favor and the motion carried.

Administrative Law Judge Margaret Robinson asked for the record to reflect, "The vote was unanimous".

METHAPHARM

**11772 West Sample Road #101
Coral Springs, FL 33065**

At the January 17 - 18, 2006 board meeting, Dr. Julie inquired if the Board had received the December 7, 2005 letter from Mr. George Gicopoulos with Methapharm requesting the Board's assistance in addressing the use of non-FDA approved methacholine chloride for asthma diagnostic testing in Tennessee. Methapharm believes that certain pharmacies are compounding non-FDA approved methacholine chloride without following the proper handling procedures and may be in violation of state and federal law. Since this information was not made available to the Board office, it was not placed on the agenda for discussion.

Dr. Todd Bess requested for the investigators to verify if pharmacies are in violation of law or rule! There were five (5) pharmacies listed: Allergy & Asthma & Sinus Center, Chattanooga, TN; Allergy & Asthma Center,

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Memphis, TN; Allergy Asthma & Immunology in Knoxville, TN; Knoxville Pulmonary Group, Knoxville, TN and

Wellness Pharmacy in Chattanooga, TN.

ADJOURNMENT

Dr. Sheila Mitchell motioned to adjourn the Board of Pharmacy meeting on Wednesday, January 18, 2006, at 12:45 p.m. CST; seconded by Dr. Todd Bess. All were in favor and the motion carried.

Respectfully submitted,

Julie Frazier, DPH
President

Terry W. Grinder, DPH
Interim Director